## State of New Hampshire Department of Environmental Services Waste Management Council

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Regenesis Corporation 1994 Maple Street West Hopkinton, NH 03229

Docket No. 05-09 WMC

Re: Appeal of Revocation of Solid Waste Permit

DES Notice of Proposed License Action

No. 04-010

## THE TOWN OF HOPKINTON'S OBJECTION TO THE REGENESIS MOTION TO TRANSFER APPEAL TO SUPREME COURT

Pursuant to Rule Env-WMC 204.15(f), the Town of Hopkinton ("Hopkinton"), by and through its attorneys, objects to the motion by Regenesis Corporation ("Regenesis") to transfer this and related appeals without ruling to the New Hampshire Supreme Court. In support of this Objection, Hopkinton states the following:

- 1. The Regenesis motion should be denied because it is contrary to the law. By statute, jurisdiction to hear this appeal rests exclusively with the Waste Management Council. *See*, RSA 21-O:9 ("The waste management council shall hear and decide all appeals from department decisions relative to the functions and responsibilities of the division of waste management in accordance with RSA 21-O:14").
- 2. As a matter of law, this and related appeals of the order to revoke the solid waste permit held by Regenesis must be heard by the Council. *See*, RSA 21-O:14 ("For purposes of this chapter, 'department decision' means the final action on an application, petition, order or request taken by the commissioner or any department official . . . to whom the commissioner has properly delegated the authority to take such final action."). A statutory grant of jurisdiction

may not be nullified by the Supreme Court rule cited by Regenesis as the legal basis for its request.

- 3. Regenesis' motion is facially deficient because it fails to state what question(s) of law it is seeking to transfer to the New Hampshire Supreme Court. Thus, the motion does not contain a statement of the "specific relief or ruling being requested" (emphasis added) as required by Env-WMC 204.15(c) and therefore, does not satisfy the Council's rules. Due to the failure to include in its motion the specific questions of law for which it seeks transfer, the Council cannot determine whether a transfer is appropriate and in accordance with law.
- 4. Supreme Court Rule 9 does not authorize interlocutory transfer of questions of fact. Regenesis' appeal seeks to overturn factual determinations such as ""Mr. Dell'Orfano in fact disclosed that Bio Energy was in dissolution. . . . The conclusion that Regenesis' permit should be revoked for failure to disclose the dissolution of Bio Energy Corporation . . . is wrong." Regenesis Notice of Appeal, ¶2.2, page 3 (emphasis added). Supreme Court Rule 9 addresses interlocutory transfer of a "question of law" and does not authorize transfer of factual questions (or an entire proceeding). Therefore, the motion should be denied.

Dated: September 30, 2005

The Town of Hopkinton

Ry Its Attorneys

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## Certificate of Service

I hereby certify that the foregoing has been sent via first class mail this date with first class postage prepaid, to:

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